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NCWA
Northern California Water Association

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October 9, 1998

Mr. Lester Snow, Executive Director
Mr. Dick Daniel, Assistant Director, Ecosystem Planning
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, California

Re: Ecosystem Restoration Program

Gentlemen:

The Northern California Water Association (NCWA) appreciates the opportunity to review the drafts of the Ecosystem Restoration Program (ERP) documents distributed at the September 8th and October 6th BDAC Ecosystem Restoration Workgroup meetings. NCWA represents 66 agricultural water districts and agencies, private water companies and individual water rights holders with senior rights and entitlements to the surface waters of the Sacramento Valley. Collectively, our members irrigate over 850,000 acres of Sacramento Valley farmland with surface water and groundwater supplies.

As part of our continuing commitment to assist CALFED resolve ecosystem problems in the Bay-Delta and upstream areas, we have provided numerous constructive recommendations to further develop the ERP. We commend CALFED for drafting an innovative ecosystem restoration program, perhaps the most comprehensive in the nation. CALFED's efforts to incorporate independent scientific analysis into the ERP are also commendable, particularly given the limited timeframe to complete this work.

Background

Our intent is to offer constructive recommendations that will allow CALFED to implement innovative and efficient restoration measures that do not jeopardize water rights or private property rights, and are consistent with existing land and water management activities in the Sacramento Valley. Although ERP implementation costs may exceed $1.5 billion, there is a limited source of available funds to support initial restoration actions. Therefore, it is imperative that Stage 1 projects demonstrate clear habitat benefits that justify these expenditures. We believe these projects should equally compliment farming, irrigation and flood control activities.

The recent ERP documents released by CALFED, coupled with the discussion paper recently completed by the Assurances Work Group, raise several concerns, many of which have

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been previously expressed by NCWA. While the ERP papers provide an incredibly detailed description of the expected benefits and adaptive management strategy associated with proposed activities, more information is needed to describe how these activities will mesh with traditional agricultural and flood control practices in the Sacramento Valley.

On an unprecedented scale, the ERP places particular emphasis on the replication of natural processes – artificial replication of flow and temperature regimes, inundation of floodplains, river meander, and sediment transport. The purported goal of these projects is laudable – the reactivation of natural processes to enhance habitat for fish and wildlife species. Many of these actions, however, may result in unpredictable and changing river conditions that could directly impact agricultural diversions and protective fish screens, and may increase conflicts with state and federal endangered species regulations. These actions may also adversely affect the viability, operation and management of local agencies that provide necessary water supply, drainage, flood control, bank protection and other services to area landowners.

This document has been prepared to offer recommended principles for CALFED to consider in their efforts to further refine ERP and assurance strategies. NCWA recommends that ERP natural process replication projects include a process that encourages public participation and comprehensive planning, provides assurances to impacted landowners, and respects existing land and water uses. This paper uses the Strategic Plan's adaptive management example for Deer Creek to further demonstrate practical applications of these principles. Inconsistencies noted in the ERP documents and the Assurances discussion paper are also briefly presented. As CALFED further studies projects designed to reactivate natural processes along the Sacramento River and its tributaries, please consider the following.

PRINCIPLE #1. CALFED Must Provide a Representative Public Process and Coordinate Comprehensive Planning for All Natural Process Replication Restoration Actions

CALFED should consolidate all existing state and federal programs with authority to acquire land or easements for habitat purposes under one program with consistent standards and public involvement requirements. A representative public process should be established to ensure that local, state and federal agencies, water suppliers, landowners, and other interested parties are afforded an advisory role in the program. Additionally, for all proposed site-specific land acquisitions and habitat restoration proposals, a public process should be developed to determine how specific actions are prioritized and selected – and to work with local interests to effectively implement these programs. CALFED agencies should initiate National Environmental Policy Act and California Environmental Quality Act reviews prior to land acquisition or easement development proceedings and notify all landowners who may potentially be affected.

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The CALFED Assurances framework clearly prioritizes the development of a representative public process. Additional discussion in the Strategic Plan towards this issue is warranted.

A comprehensive, programmatic plan should be developed to incorporate all existing and proposed habitat land acquisition efforts in the Central Valley region. The plan should address the individual and cumulative impacts these activities might have on the economy, society and environment of the region. Furthermore, a comprehensive flood control assessment should be completed that includes the following elements: a) identification of all "hard points," such as diversions, fish screen facilities, infrastructure and necessary bank protection projects; b) identification of all proposed floodplain and floodway changes due to actions such as levee setbacks, channel re-vegetation and evaluation of possible related hydraulic impacts. The comprehensive study for the Sacramento River currently being prepared by the U.S. Army Corps of Engineers might provide the initial framework for such an analysis. The assessment should recommend mitigation for all adverse impacts to water diversions, fish screen structures and criteria, and flood control facilities resulting from the proposed projects.

PRINCIPLE #2. Assurances Must Be Provided for the Continued Allowance of Flood Control and Farming Operations

Restoration projects should not limit local flood control agencies' ability to conduct activities that are reasonably necessary to properly operate and maintain existing flood control facilities and protect public safety. Adaptive project management should be exercised to ensure that resource benefits, project actions and related events do not conflict with human uses. Project modification and/or mitigation should be utilized to protect landowners and their property.

CALFED should provide full and complete assurances, consistent with the U.S. Department of Interior's "no surprises" and "safe harbor" policies, to water suppliers and landowners potentially affected by projects designed to replicate natural processes. CALFED should accept legal and financial liability for all potential risks associated with these projects, and should establish an account to fund unforeseen problems. These funds should fully cover all reasonable costs due to damage, increased operation and maintenance costs, and indirect costs associated with the implementation of these projects.

PRINCIPLE #3. Habitat Restoration areas should be developed and managed in a manner that compliments surrounding land uses and minimizes land and water use impacts to the neighboring community.

We support the Draft Assurances discussion paper recommendation that land acquisition will be on a willing seller basis with emphasis on local coordination and partnerships. We also

recommend that land acquired for environmental purposes should be turned over to a state public agency or a private non-profit entity to ensure that local assessments continue to be paid. Consistent with their intent to coordinate with local interests, CALFED should implement a "good neighbor" policy that requires the acquiring entity to respect and not interfere with existing land uses.

We are concerned that CALFED would select an action "because it creates an asset (such as new water rights or land ownership) that would retain value and could be sold or traded at a later date"[1]. Obtaining new "assets", such as land and water, should only be pursued if these acquisitions will realistically contribute to environmental restoration goals immediately associated with that specific project. Legal assurances must be secured to ensure that appropriative water rights attached to acquired property remain with the property. If water for on-site habitat purposes exceeds historic application rates, supplemental water supplies must be provided by CALFED. Purchasing land and water rights from existing landowners could disrupt the fabric of rural communities who have long been dependent on agriculture.

Adaptive Management Example

The Strategic Plan example of how ERP actions should be formulated and selected ("Chinook Salmon and Deer Creek" – Appendix D) is informative and useful. Nevertheless, additional discussion is needed to demonstrate how traditional flood control and land use practices can be maintained while enhancing the environment to provide a truly balanced solution. The following has been prepared to illustrate typical questions and issues that need to be considered in a proposal of this type, and the Deer Creek example provides a good foundation for this discussion.

The Deer Creek levee system is maintained by the local county flood control district through an assurance agreement with the Reclamation Board. The maintained section of levee includes roughly five miles of levee on either side of Deer Creek between Leininger Road and Highway 99. With the exception of one short reach of this section that was repaired in early 1997 to protect the community of Vina and Highway 99, most of the levee system is already "set back" from the main Deer Creek channel. In most reaches, vegetation extends from the waterside toe of the levee to the main channel. The discussion notes that the Deer Creek levee system is harmful to the ecosystem, based on qualitative literature references that channelized stream reaches are "frequently detrimental" to aquatic habitat. Appendix D suggests the current levees on lower Deer Creek should be further set back or breached to provide floodplain overflows and refuge for fish from high, mainstream flows.

[1] Strategic Plan for the Ecosystem Restoration Program, Page 8-7, September 30, 1998.

CALFED's conceptual solution for lower Deer Creek includes the following elements:

- Set Deer Creek levees back, permit overbank flooding and eliminate channel clearing to reestablish a more natural channel form with better habitat
- Route flood overflows to the southwest, towards new enlarged culverts under Highway 99
- Enlarge China Slough downstream of Highway 99 to its confluence with the Sacramento River
- Construct ring levees around Vina, the Abbey and other buildings in the floodplain

This proposal raises several questions that will likely arise in similar ERP applications:

1. **Uncertain Environmental Benefits.** By setting the levees further back, how many "overflow" flooding events are expected to occur to provide refuge for fish during high flows? The financial costs for this project would be significant – are the benefits to chinook salmon populations commensurate with the anticipated costs? By implementing this project, what are the clear, anticipated benefits to the overall health of the watershed? Furthermore, what are the potential environmental consequences associated with enlarging China Slough all the way to the Sacramento River? Do the negative impacts associated with widening this waterway outweigh the benefits of providing periodic refuge for fish adjacent to the channeled reach of Deer Creek?

2. **Impacts to Traditional Land Uses.** How will the residents of Vina react to the proposal to construct a ring levee around their community? The U.S. Army Corps of Engineers proposed a similar solution for the residents of the nearby community of Tehama in 1996. The proposal was withdrawn in response to the overwhelming negative reaction of residents who did not want to live in a "walled-in" community. How much existing agricultural land will be taken out of production to build this new levee and the Deer Creek setback levee? What will the lost tax revenue be to Tehama County?

3. **Coordination with Local Agencies.** How will plan proponents coordinate with the County flood control district and Board of Supervisors to properly terminate the county's current assurance agreement for the Deer Creek levee system? How will this proposal coordinate with ongoing CalTrans plans to improve the Highway 99 bridge at Deer Creek? Who will assume the expense and responsibility for maintaining the proposed ring levee?

4. **Representative Public Process / Local Assurances.** Appendix D notes that the Deer Creek Watershed Conservancy is involved with this process. While this organization is a model watershed group, it does not necessarily encompass all landowners in the Vina area. How will the concerns of affected landowners who are not interested in "periodic flooding of their

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agricultural lands" be addressed? What types of assurances or incentives will be provided to encourage widespread participation? Will the new channel configuration impact local water agency facilities or water rights?

5. **Comprehensive Planning.** Construction of new setback levees, acquisitions of new easements and land for new levees, culvert enlargement, China Slough modifications, new ring levees, and related mitigation will be extensive. How do costs factor into this solution? Do these costs justify the uncertain and qualitative benefits to the environment derived from riparian habitat improvements? Will current flood control protection be compromised? How will the proposed floodplain modifications be coordinated with the county's flood management responsibility to the Federal Emergency Management Agency?

Appendix D provides a thoughtful treatment of possible environmental benefits from the proposed replication of natural flood processes. However, many practical, human-related impacts that might be creatively addressed through adaptive management are not covered in this discussion. The final decision to move forward with such a project should only be made after these impacts, project costs and anticipated habitat benefits are compared to other proposals. Those projects that provide the most tangible, cost-effective benefits should be prioritized for implementation.

We noted that Chapter 8 of the Preliminary Draft Strategic Plan (dated 8/31/98) included a yet-to-be-completed insert entitled "A Case Study: Integrating Adaptive Management with the Compliance Strategy for the Deer Creek Study Area." This section may address some of the issues discussed herein. The Appendix D example would benefit from further discussion that extends the concept of adaptive management to ensure that human impacts of restoration actions are properly addressed.

General Observations on ERP and Assurances Draft Documents

The Indicators, Strategic Plan and Comprehensive Monitoring, Assessment and Research Program documents appear to be fairly consistent and complimentary. Nevertheless, a few essential inconsistencies appear in the ERP documents and the assurance framework.

The Strategic Plan should be strengthened to better support the ERP's basic premise on how specific instream flows will benefit ecosystem restoration actions and present the potential risks of increased seepage, stress on levee systems and damage to fish screen facilities. The assurances framework notes the "uncertainties" associated with instream flow and recommends continued evaluations of instream flow needs. Yet at the same time, the framework promotes the acquisition of 100,00 acre-feet of water for ecosystem needs. The justification for this target value, as well as identification of potential supply sources, must be provided in the revised EIS/EIR.

The Strategic Plan suggests that pilot projects will be initially developed to adaptively manage and monitor small-scale replications of natural processes on three selected corridors. The Assurances discussion paper advocates acquiring the remaining 60 percent of the easements or fee title for the Sacramento River meander corridor in the first 7 years of the program. Acquisitions on the Sacramento River should be conducted in the same manner as with smaller streams, starting with a comprehensive plan that builds on the SB 1086 work, integrating all agency actions and objectives. Only then should pilot projects proceed that incorporate the principles discussed earlier in this paper, before large-scale acquisitions are pursued.

NCWA supports the recommendation made in the assurances draft discussion paper to implement aggressive screening of existing unscreened or poorly screened diversions on key Bay-Delta tributaries in Stage 1. However, the Indicators document does not discuss criteria such as the number of screened diversions, or proportion of stream flows diverted through screened diversions as indicators of program success. Already, on the Sacramento River, more than 12 large water users have completed a screening project, building new screens, or are engaged in feasibility or final design. These 12 diversions represent approximately 72%-81% of the total agricultural water supply diverted from the Sacramento River[2]. Clearly, this is an indication that will contribute to the overall "success" of restoration actions on the river. CALFED should also develop a priority implementation plan to guide the continued efforts to screen riverine diversions in Stage 1. These projects provide several known benefits and should be prioritized ahead of large-scale land and water acquisitions. Initial ERP actions should focus on clear solutions to known problems.

Conclusion

We hope these comments will assist CALFED implement critically important ecosystem restoration measures while adaptively managing these projects to compliment existing land and water uses. Our intent is to provide constructive comments that will be used to clearly integrate the Strategic Plan with assurances and staging strategies. NCWA looks forward to working with you and your staff to develop a credible, workable, consensus-based ecosystem restoration program.

Sincerely,

Dan Keppen
Member and Government Relations

Dan/docs/calfed/erpp/stplan

[2] 80%-90% of the total developed water on the Sacramento River is held by Sacramento River Water Rights Settlement Contractors and the Tehama-Colusa Canal Authority. 12 water users, all of whom are addressing screening issues, divert 90% of this water supply.

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